

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY J. FOSS,

Petitioner,

vs

9:01-CV-420

HAROLD GRAHAM,

Respondent.

APPEARANCES:

OF COUNSEL:

TIMOTHY FOSS

Petitioner, Pro Se

96-a-5314

Wende Correctional Facility

P.O. Box 1187

Alden, New York 14004

HON. ANDREW M. CUOMO

Attorney General of the

State of New York

Attorney for Respondent

Department of Law

The Capitol

Albany, NY 12224

GERALD J. ROCK, ESQ.

Asst. Attorney General

HON. DAVID N. HURD

United States District Judge

DECISION and ORDER

Petitioner, Timothy J. Foss, brought a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By Report-Recommendation dated February 16, 2007, the Honorable Victor E. Bianchini, United States Magistrate Judge, recommended that the petition be dismissed. It is noted that the respondent has requested a clarification of the party respondent since Mr. Burge has been replaced by Harold Graham as Superintendent of

Auburn Correctional Facility. Said request is granted. The petitioner has filed objections to the Report-Recommendation.

A de novo review of the very thorough and comprehensive Report Recommendation, including petitioner's objections has been made. The Magistrate Judge has identified possible trial errors in the admission of the earring; the admission of the before and after photographs of the victim; a single prosecutor's summation remark; one part of the trial court's charge; three brief remarks made by the trial judge; and a juror's conduct. Even assuming, without deciding, that all of the above were, in fact, trial errors, the petitioner would still not be entitled to relief. The cumulative effect of those "errors" would not be sufficient to violate his constitutional right to a fair trial.

The Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 cases.

Accordingly, it is

ORDERED that

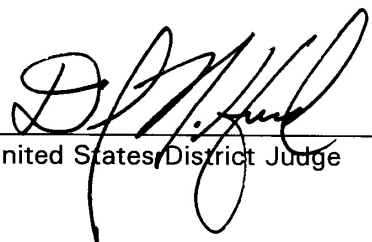
1, The petition is amended to reflect that Harold Graham is now the proper respondent; and

2. The petition for a writ of habeas corpus is DENIED and DISMISSED in its entirety.

The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

Dated: July 17, 2007
Utica, New York.


United States District Judge